

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS

TYLER DIVISION

VINCENT CASARES, #1850085	§	
VS.	§	CIVIL ACTION NO. 6:17cv701
DR. LINTHICUM, ET AL.	§	

ORDER ADOPTING REPORT AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE

Plaintiff Vincent Casares, an inmate currently confined at the Wayne Scott Unit within the Texas Department of Criminal Justice, (TDCJ), is proceeding *pro se* and *in forma pauperis* in the above styled and numbered civil rights lawsuit. The complaint was referred to the United States Magistrate Judge, the Honorable Judge K. Nicole Mitchell, for findings of fact, conclusions of law, and recommendations for the disposition of the case.

On July 30, 2019, Judge Mitchell issued a Report, (Dkt. #84), recommending that Defendants' amended motion for summary judgment for the failure to exhaust administrative remedies, (Dkt. #49), be granted, in part, and denied, in part. Specifically, Judge Mitchell found that Plaintiff properly exhausted his excessive force claim, but not his claims concerning forty days of detention without medical assistance. She further recommended that Plaintiff's claim of excessive force should proceed. A copy of this Report was sent to both parties return receipt requested. However, to date, no objections to the Report have been filed.

Because no objections to Judge Mitchell's Report have been filed, both parties are barred from *de novo* review by the District Judge of those findings, conclusions, and recommendations and, except upon grounds of plain error, from appellate review of the unobjected-to proposed factual findings and legal conclusions accepted and adopted by the district court. *Douglass v.*

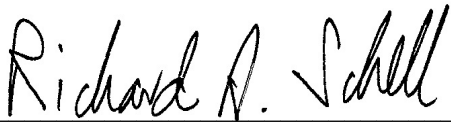
United Services Auto. Ass'n., 79 F.3d 1415, 1430 (5th Cir. 1996) (*en banc*).

The court has reviewed the pleadings in this cause and the Report of the Magistrate Judge. Upon such review, the court has determined that the Report of the Magistrate Judge is correct. *See United States v. Wilson*, 864 F.2d 1219, 1221 (5th Cir.), *cert. denied*, 492 U.S. 918, 109 S.Ct. 3243 (1989) (where no objections to a Magistrate Judge's Report are filed, the standard of review is "clearly erroneous, abuse of discretion and contrary to law."). Accordingly, it is

ORDERED that the Report of the United States Magistrate Judge, (Dkt. #84), is **ADOPTED** as the opinion of the court. Further, it is

ORDERED that Defendants' amended motion for summary judgment, (Dkt. #49), is **GRANTED**, in part, and **DENIED**, in part. Plaintiff's claims concerning detention for forty days are **DISMISSED**, without prejudice, for failure to exhaust. However, Plaintiff's excessive force claim will proceed before the court.

SIGNED this the 27th day of September, 2019.



RICHARD A. SCHELL
UNITED STATES DISTRICT JUDGE